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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,802	03/22/2004	James H. Cink	WMMG 3562.4	9954

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SENNIGER POWERS LEAVITT AND ROEDEL
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16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,802

Applicant(s)

CINK ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-17, 19, 20 and 24-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-17, 19, 20 and 24-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15-17, 19, 20, 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishoff et al. (US 6,016,625)

The patent to Bishoff shows a termite bait station 10 in Fig. 2 having an aggregation base being attractive to termites and forming an aggregation site for termites. Bishoff shows the aggregation base as the bottom element 72, 80 in Fig. 2 and a replaceable container as the top element 72, 80 positioned within the volume of the station and adjacent the aggregation base. The replaceable container may be removed from the apparatus without substantially disturbing the aggregation base. The aggregation base has a generally cylindrical outer surface and at least one void which is taken as the central part of channel 82 which extends through the pest baiting device or aggregation base 80. The void is centrally located within the aggregation base. The outer surface of the aggregation base extends laterally outward to face a subterranean cavity. Fig. 4 of Bishoff shows an alternate embodiment having an aggregation base as housing 112, having apertures 120 and the bottom element 122 which has a channel passing completely through the aggregation base from the outer surface and leading inward to a void which is formed between the blocks 122 and the elongated member 148. This

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embodiment has the housing formed with a cylindrical shape on the top of the housing and a square or rectangular shape on the bottom of the housing. Conceptually, this embodiment shows two channels from the outer surface going through apertures 120 leading inward to the void. Hence this encourages termites to egress into the aggregation base immediately upon contact with the aggregation base since the channel provides a path and the termites do not have to excavate their own path. In reference to claims 15-17, it would have been obvious to combine the embodiments of Bishoff to form an aggregation base in the shape of a cylinder since changes in shape are held to be obvious. See *In re Dailey et al.*, 149 USPQ 47. In reference to claims 19-20, Bishoff shows the aggregation base 80 being a cellulosic material such as wood as disclosed in column 7, lines 51-66. The channel 82 that makes up the void has a surface which contains a cellulosic material. In reference to claim 24, Bishoff shows the aggregation base 122, 122 as having two separable portions. In reference to claim 25, Bishoff shows one channel in each portion. In reference to claim 26, Bishoff shows two channels but it would have been obvious to employ three channels in each portion for multiplied effect. See *In re Harza*, 124 USPQ 378. In reference to claim 27 Bishoff shows the channels oriented substantially orthogonal to the cylindrical outer surface. In reference to claim 28, Bishoff shows the channels as being evenly spaced from each other and hence, it would have been obvious to space the three channels evenly to make maximum use from the entire surface area. In reference to claim 29, Bishoff shows each portion of the aggregation base as being rectangular or square, but it would have been obvious to employ two semi-cylindrical portions noting that in Fig. 2,

Bishoff shows a cylindrical aggregation base. Also, it would have been obvious to form the cylindrical aggregation base as shown in Fig. 2 in two pieces as shown in Fig. 4 since the function is the same and changing an integral piece to separable pieces has been held to be obvious. See *In re Dulberg*, 129 USPQ 348. In reference to claim 30, Fig. 4 of Bishoff shows void as being rectangular, but it would have been obvious to employ a cylindrical void since changes in shape have been held to be obvious. See the citation to *In re Dailey et al.*, above. In reference to claim 31, Fig. 4 of Bishoff shows a top surface such as the top surface of the blocks 122 substantially orthogonal to the cylindrical outer surface 112. Bishoff shows the void extending to the top surface for visual inspection of the void for signs of termite activity. In reference to claim 32, Bishoff shows the aggregation base 72 as being a plastic container as disclose in column 7, lines 7-9 with a plurality of openings 74 in the sidewall. Hence, it would have been obvious to employ a foam material since the selection of a known material is based on its suitability for the intended use. See *In re Leshin* 125 USPQ 416.

Response to Arguments

3. Applicant's arguments filed April 12, 2005 have been fully considered but they are not persuasive. Applicant's response overcomes the rejections under 35 USC 112, second paragraph and the terminal disclaimer overcomes the double patenting rejection. Applicant's other arguments in regard to Bishoff have been addressed in the above rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR